

REMARKS/ARGUMENTS

The Office has alleged that the application contains claims to patentably distinct species selected from A. a method of making using two powders added separately; B. a method of making using a cosmetic film and a powder adhesive, C. a method of making using a powder adhesive and a cosmetic film, D. a method of making using two films, E. a method of making using one film containing both adhesive and cosmetic, and F. a method of making using two powders added as a mixed powder.

Applicants traverse the Election of Species Requirement on the grounds that the Office has not provided any reasons, whatsoever, to support the conclusion of patentable distinctness.

Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper, there must be a patentable difference between the species as claimed. MPEP §808.01(a). The Office has not provided any reasons or examples to support a conclusion that the species are indeed patentably distinct. Accordingly, the restriction is improper, and Applicants' election of species is for examination purposes only.

Applicants respectfully submit that the Office has not shown that a serious burden exists in searching the entire application. Evidence that there is no burden in examining the entire set of pending claims lies in the fact that the Office has already issued an action on the merits.

Finally, with respect to the elected species, Applicants respectfully submit that, should the elected species be found allowable, the Office should expand its search to the non-elected species.

Application No. 09/996,584

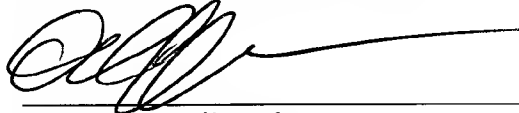
Reply to Communication of April 21, 2005

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Election of Species Requirement. Withdrawal of the Election of Species Requirement is respectfully requested.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice of such action is earnestly solicited

Respectfully submitted,

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